

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

JUN 17 2011

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

Carol Ahanmisi, a/k/a Carol Egwaoje  
Ahanmisi, f/k/a Carol Fitzgerald  
12007 Dewey Road  
Silver Spring, MD 20609  
301-996-5109

Plaintiff,  
v.

Department of Labor,  
U.S. Department of Labor,  
200 Constitution Avenue, N.W., Room N-  
2428, Washington, D.C. 20210

Defendant.

Case: 1:11-cv-01118  
Assigned To : Walton, Reggie B.  
Assign. Date : 6/17/2011  
Description: FOIA/Privacy Act

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, to order the production of agency records, concerning records of Plaintiff's Form ETA-750, filed on or before April 30, 2001, which defendant has improperly withheld from plaintiff.

2. This court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff, Carol Ahanmisi, is the beneficiary of a previously filed Form ETA-750, filed on her behalf by Songhai Restaurant and Chris Chidueme and is the requester of the records which defendant is now withholding. Plaintiff has requested this information for use in her immigration proceedings and prompt release of the information is essential to Plaintiff's immigration case as it bears directly on her eligibility for relief under the Immigration and Nationality Act (INA).

4. Defendant Department of Labor is an agency of the United States and has possession of the documents that plaintiff seeks.

5. By letter dated August 21, 2008, plaintiff requested access to "all documents a Form ETA-750, Application for Labor Certification". A copy of this letter is attached as Exhibit 1.

6. By letter dated July 2, 2009, Defendant issued a "no records" letter in response to Plaintiff's Request. A copy of this letter is attached as Exhibit 2.

7. By letter dated September 30, 2009, plaintiff appealed the denial of this request. A copy of this letter is attached as Exhibit 3.

8. By letter dated July 29, 2010, plaintiff's appeal was denied. A copy of this letter is attached as Exhibit 4.

9. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for defendant's denial of such access.


WHEREFORE, plaintiff requests this Court:

- (1) Order defendant to provide access to the requested documents;
- (2) Expedite this proceeding as provided for in 28 U.S.C. § 1657;
- (3) Grant such other and further relief as may deem just and proper.

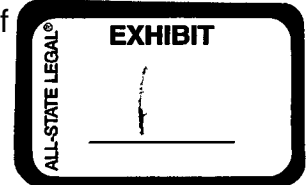
Respectfully submitted,

Carol Ahanmisi, Pro Se

By:

  
\_\_\_\_\_  
Carol Ahanmisi  
12007 Dewey Road  
Silver Spring, MD 20609  
301-996-5109

Dated: June 15, 2011



August 21, 2008

FOIA Disclosure Officer  
Office Foreign Labor Certification (ETA)  
U.S. Department of Labor - ETA  
200 Constitution Avenue, NW  
Washington, D.C. 20210-0002

RE: **EXPEDITED FOIA REQUEST**  
Labor Certification - 2001  
Employer: Chris Chidueme, Songhai Restaurant  
Alien: Carol Egwaoje Ahanmisi (now Carol Ahanmisi Fitzgerald, A072-726-860)

Dear Sir or Madam:

Please be advised that we represent the above-named persons in immigration matters and am writing to make a request under the Freedom of Information Act (FOIA) in order to retrieve documents relating to the immigration case of Carol Ahanmisi Fitzgerald, A072-726-860. Please find attached two signed Form G-28, Notice of Entry of Appearance as Attorney indicating our representation of both Md. Chidueme and Ms. Ahanmisi Fitzgerald. Ms. Ahanmisi Fitzgerald is in immigration proceedings in Baltimore, Maryland and **requests expedited Track III processing**. Time is of the essence in her case: the Respondent has an individual hearing on her case on October 14, 2008. (See attached hearing notice).

Specifically, we request any documents relating to a Form ETA-750, Application for Labor Certification, which would have been filed by Chris Chidueme, President of Songhai Restaurant as a petitioner/employer on behalf of Carol Ahanmisi Fitzgerald. Please find attached Form ETA-750 that would have been filed with the DC Department of Employment Services in April of 2001. Please process. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "R. L. Johnson".

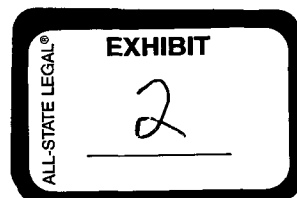
Randall L. Johnson, Esq.  
Enclosures

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**U.S. Department of Labor**

Assistant Secretary for  
Employment and Training  
Washington, D.C. 20210



**May 19, 2009**

**Randall L. Johnson, Esq.  
Johnson & Associates, PC  
1916 Wilson Boulevard, Suite 203  
Arlington, Virginia 22201**

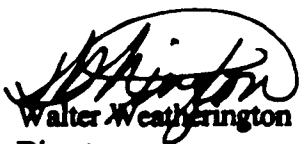
**RE: Freedom of Information Act Request Response  
Tracking No. 536879 – Carol Edwaoje Ahanmisi; Songhai Restaurant**

**Dear Mr. Johnson:**

Your Freedom of Information Act request was forwarded to the Employment and Training Administration Office Foreign Labor Certification (OFLC) for processing. Please be advised that after diligent search and review, OFLC reports that the records you have requested do not presently exist. In accordance with 29 CFR 70.21(d), a “no records” response to your request must be provided. Although you may receive separate correspondence from OFLC, as an additional measure of customer courtesy, ETA is providing the earliest notice possible upon search completion.

Although you have not been denied any existing record, you may file an appeal of this decision with the Solicitor of Labor within 90 days from the date of this letter. The appeal must state the grounds for the appeal and include supporting statements or arguments. To facilitate processing, you may fax your appeal to (202) 693-5538. A copy of your initial request and a copy of this letter must be included. If mailed, both the envelope, and the letter of appeal should be clearly marked: “Freedom of Information Act Appeal,” and addressed to: Solicitor of Labor, U.S. Department of Labor, 200 Constitution Avenue, N.W., Rm. N-2428, Washington, D.C. 20210.

**Sincerely,**

  
**Walter Weatherington**

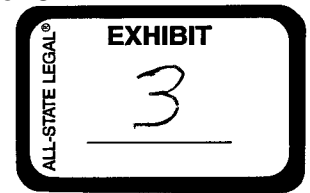
**Director  
Office of Special Programs & Emergency Preparedness**

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Courts for the District of Columbia

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**JOHNSON & ASSOCIATES, P.C.**

ATTORNEYS AT LAW  
1916 WILSON BOULEVARD  
SUITE 203

ARLINGTON, VIRGINIA 22201

**RANDALL L. JOHNSON**  
MEMBER VA, DC BAR

TELEPHONE (703) 516-4400

**DAVID C. DRAKE**  
MEMBER VA BAR

FAX (703) 516-9089

E-MAIL: RL.Johnson@verizon.net

September 30, 2009

Office of the Solicitor  
United States Department of Labor  
200 Constitution Avenue, NW  
Room N-2428  
Washington, DC 20210

**Re: FOIA Appeal**  
2001 Application for Alien Employment Certification  
Employer: Chris Chidueme, Songhai Restaurant  
Alien: Carol Egwaoje Ahanmisi (now Carol Ahanmisi Fitzgerald), A072-726-860

Dear Sir/Madam:

I am writing in response to your letter dated July 2, 2009 indicating a "no records" response to the FOIA request for the above Employer and Alien. Please be advised that the Employer and Alien wish to appeal this "no records" response. Although you indicated in your initial search yielded no records relating to an Application for Alien Employment Certification, the Employer and Alien assert that these records do exist. The Employer and Alien were previously informed that the file for this application was with the old Washington DC Department of Employment Services (DOES). Therefore, I respectfully request that your office review any records from the Washington, DC DOES to see if any record exists regarding this Application for Alien Employment Certification.

If you have any questions or require any further information or documentation, please do not hesitate to contact my office. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "RL Johnson".

Randall L. Johnson  
Enclosures

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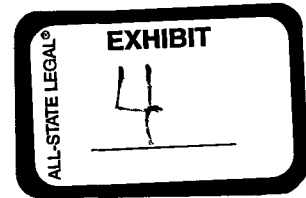
**U.S. Department of Labor**

Office of the Solicitor  
Washington, D C 20210



Randall L. Johnson  
Johnson & Associates, P.C.  
1916 Wilson Boulevard  
Suite 203  
Arlington, VA 22201

**JUL 29 2010**



Re: FOIA Appeal No. 090355

Dear Mr. Johnson:

This decision is in response to your letter dated September 30, 2009, appealing under the Freedom of Information Act (FOIA), the July 2, 2009, determination of William L. Carlson, Administrator, Office of Foreign Labor Certification (OFLC), Employment and Training Administration (ETA). You have appealed OFLC's response to your FOIA request for any documents related to Form ETA-750, Application for Alien Labor Certification, filed on behalf of Carol Egwaoje Ahanmisi (now Carol Ahanmisi Fitzgerald) by Chris Chidueme, Songhai Restaurant. ETA's response stated that no records were found responsive to your request.

We have contacted OFLC, and it has confirmed that it has searched all reasonably available locations and found no documents responsive to your request. OFLC informed us that it has performed a second search for this request on June 14, 2010, in its Permanent Backlog System (PBLs) and Paradox databases (Paradox is the database used prior to the creation of the PBLs database), for any references to Carol Egwaoje Ahanmisi or Chris Chidueme, Songhai Restaurant. Normally, records such as the ones in this case would be retained for two years in the Processing Center where they were processed and then shipped and retained for an additional three years in the Federal Records Center. The Federal Records Center was not searched in this case, because no application by Chris Chidueme, Songhai Restaurant, on behalf of Carol Egwaoje Ahanmisi was located in the PBLs or Paradox databases. If the records existed, the Paradox database would provide a reference to their location in the Federal Records Center. OFLC confirms that these sources constitute all of the locations where the information you seek might be found.

Prior to 2005, Foreign Labor Certification applications were filed initially with the State Workforce Agency (SWA), in this case, according to Employer and Alien, the District of Columbia Department of Employment Services (DOES). In 2005, DOL established two federal Backlog Elimination Centers (BECs) in Dallas and Philadelphia for centralized processing of permanent labor certification applications, dividing pending cases between the centers based upon the state in which the area of intended employment was located. Previously filed applications pending in SWA offices or ETA Regional Offices were transferred for centralized processing in Dallas and Philadelphia. Cases from DOES were to be transferred to the Philadelphia Backlog Elimination Center.

There are several reasons, however, why information regarding an application, even if it was filed with the DOES may not have been found in the records of the Philadelphia BEC. For example, the DOES may have closed or otherwise disposed of the case prior to the date of

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shipping to the Philadelphia BEC. Cases that were closed at the State or Regional Office because they were denied, closed or withdrawn would not have been sent to a BEC.

Even assuming that this case was not closed at the State level, OFLC took a number of steps to communicate with foreign labor certification applicants and employers during the transfer of OFLC applications to the BECs. Once a case was transferred from the SWA or ETA Regional Office to a Backlog Elimination Center and entered into the Permanent Backlog System (PBLs), the employer or attorney of record was to receive a letter with a new case number for tracking purposes. Using this new case number, the public could obtain the status of a case: whether it was In Process, Certified, Denied, Closed, Withdrawn, or actively On Appeal. You do not purport to have obtained such a case number from the Philadelphia Backlog Center.

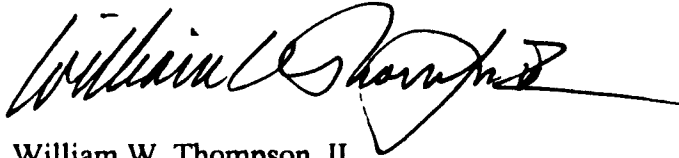
Additionally, OFLC published on its website two special procedures for inquiries in backlog cases. It published in July 2006 a procedure for employers or their representatives to follow if they had not been contacted by a BEC with a 45-day Center Receipt Notification Letter (CRNL or "45-day" letter). OFLC then published a procedure in September 2006 for employers or their representatives if they had not been contacted in any way by a BEC. The "45-day" letter was so named because all requested corrections, supporting documents, and a Selection of Continuation Option Letter were to be returned to the appropriate BEC within 45 days. Once the vital information in an application was fully entered into the OFLC database, the 45-day letter was the precursor to further processing of that application; the letter functioned both as notice to an employer that its application had come up for processing in the queue, and as a request for confirmation from the employer or its representative that the employer wished to continue with the case. The procedures provided specific timeframes within which to contact the BECs. If a BEC did not receive a response to its 45-day letter, or the response did not reflect requested corrections, the case was closed. A process was subsequently introduced to electronically submit requests to reopen cases that had been allegedly inappropriately closed.

Under FOIA, a search for responsive documents need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request. *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986). An agency is not required to reorganize its filing system in response to a FOIA request nor search every document in its possession. *Goland v. Central Intelligence Agency*, 607 F.2d 339, 369-70 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 927 (1980); *Church of Scientology v. Internal Revenue Service*, 792 F.2d 146, 150-51 (D.C. Cir. 1986).

We find that in this case ETA made a reasonable effort to locate the documents that you requested and that the search conducted was adequate. Because you have not provided any evidence that your clients availed themselves of the process outlined above, or even submitted an application that was processed by DOES, or that such application was ever sent to the Philadelphia BEC, there are no further steps that OFLC could reasonably undertake. Consequently, no document has been processed or provided in this appeal decision. If you have further questions in regard to this search, please contact OFLC at 202-693-2944. Our failure to assert any other exemption or defense that may apply in this appeal does not constitute a waiver of that exemption or defense.

This appeal decision constitutes final agency action for purposes of judicial review. While we do not consider this response a denial of information under the FOIA, the Freedom of Information Act provides for judicial review of administrative decisions denying a request in whole or in part. 5 U.S.C. § 552(a)(4)(B). You have the option of seeking judicial review of this determination by filing suit against the Department of Labor. A complainant may bring suit in the district court of the United States in the jurisdiction in which the complainant resides or has his or her principal place of business, or in which the agency records are maintained, or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Thompson, II". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William W. Thompson, II  
Associate Solicitor for Management  
and Administrative Legal Services